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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,276	02/20/2004	Mitch Junkins	015714.0033US1	7619
34284	7590	11/16/2005	EXAMINER	
ROBERT D. FISH RUTAN & TUCKER LLP 611 ANTON BLVD 14TH FLOOR COSTA MESA, CA 92626-1931			O'CONNOR, CARY E	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/783,276	JUNKINS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cary E. O'Connor	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 21 and 22 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 21 and 22 have been renumbered 22 and 23.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 21 is rejected under 35 U.S.C. 102(e) as being anticipated by Bergman (2002/017057). Bergman shows a flossing device comprising a pair of times between which a length of floss 30 is strung, a quick-release mechanism 24 having an actuating arm disposed with a neck of the flossing device, wherein movement of the actuating arm releases tension of the length of floss.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bushberger (5,267,579) in view of Murayama (5,343,883) and Romanus (5,188,133).

Bushberger shows a flossing device comprising an internal supply of floss 52, a pair of tines between which a length of the floss is strung, and a vibration source. Bushberger does not specify the frequency of the vibrations produced by the vibration source.

Murayama shows a flossing device having a vibration source which causes the floss to vibrate. Murayama discloses that the frequency produced by the vibration source may be between 2000 and 20,000 Hz (column 6, lines 24-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made produce vibrations by the vibration source of Bushberger in frequencies between 2000 and 20,000 Hz, in view of Murayama, in order to effectively clean the teeth. The flossing devices of Bushberger and Murayama do not include a user-operable actuator coupled to the tines that changes the tension of the floss without unwinding or winding the floss. Romanus shows a flossing device comprising a user-operable actuator 16 which changes the tension on the floss without winding or unwinding the floss. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the flossing device of Bushberger as modified by Murayama with a user-operable actuator

coupled to the tines that changes the tension of the floss without unwinding or winding the floss, as taught by Romanus, so that a strong tension may be maintained on the floss to facilitate flossing. As to claim 5, note that the vibration source of Bushberger may be an eccentric weight (column 5, lines 58). As to claim 7, Bushberger and Murayama discloses the claimed invention except for the cutting blade located on the tines (the cutting blade 65 of Bushberger is located on the handle). It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the cutter of Bushberger on a tine, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. As to claim 8, note that the floss supply is a spool of floss 52 (column 4, line 54). As to claim 12, note that the floss of Romanus is advanced by an electrically powered motor 100.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bushberger (5,267,579) in view of Murayama (5,343,883) and Romanus (5,188,133) as applied to claim 1 above, and further in view of Thackrey (4,555,697). The devices of Bushberger or Murayama do not utilize an electromagnetic buzzer as the vibration source. Thackrey shows a orally held vibration alarm wherein the vibration source is an electromagnetic buzzer 3 (column 3, line 19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the vibration source of Bushberger with an electromagnetic buzzer, in view of Thackrey, because it is more lightweight than the motor/eccentric weight arrangement.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bergman (2002/0170570) in view of Bushberger (5,267,579). The device of Bergman

does not include a vibration source coupled to the tines. Bushberger shows a flossing device having a vibration source coupled to the tines. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bergman with a vibration source, as taught by Bushberger, in order to aid in the effective cleaning between the teeth.

***Allowable Subject Matter***

Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Specification***

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code (page 5). Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

***Response to Arguments***

Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 571-272-4715. The examiner can normally be reached on M-Th 7:00-3:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cary E. O'Connor  
Primary Examiner  
Art Unit 3732

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